

**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MASSACHUSETTS  
(EASTERN DIVISION)**

In re:

CUBELLIS, INC.,

Debtor.

Chapter 7

Case No. 10-15894-FJB

**MOTION FOR RELIEF FROM STAY**

Pursuant to section 362(d)(1) of Title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”), Advantage Construction, Inc. and Compass Realty Partners, LLC (the “Plaintiffs”) hereby request an order lifting the automatic stay to the extent necessary for Plaintiffs’ limited exercise of their rights as creditors of Cubellis, Inc. (the “Debtor”), as follows:

**BACKGROUND**

1. On March 31, 2009, Plaintiffs brought construction dispute claims against the Debtor in an action styled *Advantage Construction, Inc. and Compass Realty Partners, LLC v. Cubellis, Inc. (f/k/a Cubellis Associates, Inc.) and Cubellis Saivetz Associates*, case number NOCV 2009-00550 (Norfolk Superior Court) (the “Civil Action”).

2. On May 28, 2010, the Debtor filed a voluntary petition for relief under Chapter 7 of the Bankruptcy Code.

3. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334(b). Pursuant to 28 U.S.C. § 1334(b) and 28 U.S.C. § 157(b)(2)(g), this is a core proceeding.

**RELIEF REQUESTED**

4. By this Motion, the Plaintiffs respectfully request entry of an order modifying the automatic stay imposed by section 362(a) of the Bankruptcy Code to permit them to liquidate their claims in the Civil Action and to permit them to recover against the Insurance Proceeds (as that term is defined below).

**BASIS FOR RELIEF**

5. Section 362(d)(1) of the Bankruptcy Code provides that a Court “shall” grant relief from the automatic stay for “cause.”

6. Pursuant to information provided by the Debtor, the Debtor’s bankruptcy estate includes a certain insurance policy that may provide coverage for the claims brought against the Debtor in the Civil Action under applicable non-bankruptcy law. Further, the amount of available proceeds (the “Insurance Proceeds”) under such policy may exceed the amount of Plaintiffs’ claims. Plaintiffs therefore believe that cause exists to lift the automatic stay pursuant to section 362(d)(1) of the Bankruptcy Code to permit them to liquidate their claims in the Civil Action and to permit them to recover against the Insurance Proceeds. *See 3 Collier on Bankruptcy*, ¶ 362.07[3][a] (15th ed. rev.) (“When the court is reasonably confident that the policy proceeds will be sufficient to satisfy all creditors with claims that may be paid under the policy, the court should grant relief from the stay to permit an action either against the debtor, if necessary, or directly against the insurer.”).

**NOTICE**

7. The Plaintiffs have provided notice of this Motion via electronic mail transmission or first-class mail to (i) the Chapter 7 Trustee, (ii) the Debtor, (iii) the

Office of the United States Trustee and (iv) all parties requesting service of notice in this proceeding.

WHEREFORE, Advantage Construction, Inc. and Compass Realty Partners, LLC respectfully request that this Court (i) enter an order in the form attached hereto lifting the automatic stay to the extent necessary for their limited exercise of their rights as creditors of the Debtor to liquidate their claims against the Debtor and to recover against the Insurance Proceeds and (ii) providing such other relief as is just and proper.

Respectfully Submitted,

ADVANTAGE CONSTRUCTION, INC. and  
COMPASS REALTY PARTNERS, LLC,

By their Attorneys,

June 29, 2010

/s/ Martin P. Desmery  
Martin P. Desmery (BBO# 550133)  
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**ORDER ON MOTION FOR RELIEF FROM STAY**

Upon consideration of the *Motion for Relief from Stay* (the “Motion”) filed by Advantage Construction, Inc. and Compass Realty Partners, LLC (the “Plaintiffs”), after due notice to all parties in interest and hearing, the Court hereby ORDERS that:

1. The Plaintiffs are granted relief from the automatic stay to the extent necessary for their limited exercise of their rights as creditors of the Debtor to liquidate their claims against the Debtor and to recover against the Insurance Proceeds (as that term is defined in the Motion).

2. The stay provided for by Fed. R. Bankr. P. 4001(a)(3) is hereby waived.

Dated: \_\_\_\_\_, 2010

\_\_\_\_\_  
Honorable Frank J. Bailey  
United States Bankruptcy Judge

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**CERTIFICATE OF SERVICE**

I, Kathleen A. Rahbany, hereby certify that on June 29, 2010, I caused a true and accurate copy of the foregoing to be served on the parties at the addresses set forth below via the Court's electronic notification system or first class mail, postage prepaid.

June 29, 2010

/s/ Kathleen A. Rahbany  
Kathleen A. Rahbany

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